



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 12-05484
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: Alfred A. Lacer, Esq.

12/23/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s sole financial delinquency is a deficiency remaining on a mortgage that was foreclosed in 2013 after she and her husband divorced. She never had any financial problems before the divorce and has not had any additional financial problems since the divorce. She manages her finances prudently, creating a budget with the help of a financial counselor and maintaining a retirement account with a current balance of approximately \$15,000. Under these circumstances, I conclude that Applicant has mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

On May 6, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On March 10, 2014, Applicant answered the SOR, admitting the allegation and requesting a hearing. The case was then assigned to me on September 10, 2014. DOHA issued a notice of hearing on October 8, 2014, scheduling the hearing for October 27, 2014. The hearing was held as scheduled. At the hearing, I received four Government exhibits (GE 1-GE 4) and ten Applicant exhibits (AE A - AE J). Also, I took administrative notice of three documents¹ (Hearing Exhibits (HE) I - III), and I considered the testimony of Applicant and two character witnesses. The transcript (Tr.) was received on November 5, 2014.

Findings of Fact

Applicant is a 35-year-old woman. Her first marriage ended in divorce in 2011, and she recently remarried. (HE I; AE B) She earned a bachelor's degree in sociology in 2001, and has been working since 2011 as a consultant for a defense contractor that provides program management support to federal government engineers. (Tr. 64; GE 1 at 11) Specifically, she helps develop spending plans and conducts data analysis for her clients. (Tr. 36)

Applicant is highly respected on the job. According to her supervisor, the employee evaluation process includes input from personal observation, clients, team members, and other peers. Evaluating these factors, Applicant's supervisor characterizes her work as exceptional. (Tr. 33, 36) According to Applicant's second-level supervisor, she has been a "high-performing, trending-upward employee since day one," who has thrived in "an intense, fast-paced, consistently-changing environment." (Tr. 52-53)

Applicant married her first husband in 2005. In August 2006, they purchased a home for \$306,000 and financed the purchase with a mortgage.² (AE F) In 2008, Applicant and her first husband began experiencing marital problems. Subsequently, in September 2009, they separated and decided to pursue a divorce. (Tr. 70) Applicant moved from the home while her first husband remained. They agreed to share equal responsibility for the mortgage payments, paying approximately \$950 each per month. (Tr. 73)

This arrangement continued for nearly two years until July 2011 when her ex-husband³ informed her that he was going to move from the home, relocate to another

¹HE I is Applicant's current marriage certificate; HE II is a copy of the discovery letter that Department Counsel mailed to Applicant; and HE III is a copy of the relevant state statute governing deficiency judgments.

²It is unknown from the record whether they made a downpayment.

³The court had finalized their divorce earlier that month. (AE B)

area, stop his share of the mortgage payments, and attempt to execute a short sale of the home. (Tr. 74) In part, because of the national housing market collapse, the value of the home had decreased, and totaled approximately \$60,000 less than the remaining mortgage balance. Applicant's ex-husband told her that if she did not agree with his plan to short sell the home, the responsibility for the entire mortgage was going to "be on [her]." (Tr. 123) Applicant subsequently complied with his request, stopped making mortgage payments, and helped initiate the short sale process.

Subsequently, Applicant and her ex-husband attempted to short sell the home. Their efforts were unsuccessful, as the mortgagee rejected the purchase contracts of two successive, prospective buyers. (Tr. 85-90; GE 3 at 14)

In March 2012, the mortgagee bank initiated foreclosure proceedings. (AE D at 111) The mortgage balance was \$290,000. (AE D at 6) By October 2013, the mortgage had been foreclosed, and the home had been purchased for \$235,000 leaving a deficiency balance, factoring miscellaneous expenses, of approximately \$58,000. (AE D at 6; Tr. 77)

Since then, the mortgagee bank was purchased by another bank. (AE J) As the successor bank, it has an interest in the property. However, it has not pursued legal action against Applicant, as required under state law (HE III), to recover the deficiency balance. Applicant has a checking account with the current mortgagee bank. She also maintains a credit card account with the current mortgagee bank. (Tr. 80-81)

In October 2014, Applicant successfully completed a money management class. She learned how to budget money more efficiently, set goals, distinguish between needs and wants, and accumulate wealth. (AE G) Applicant incurred no delinquent debts before the foreclosure and has not incurred any delinquent debts since then. (Tr. 96) Her credit card accounts are in good standing, and she is working toward reducing their balances, using lessons learned from her money management class. (Tr. 99)

Applicant has a budget. She earns \$68,000 annually, and she has approximately \$685 in monthly discretionary income. (GE 3 at 38) Also, she has approximately \$15,000 invested in a retirement account. (Tr. 128)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.” (AG ¶ 18) In October 2013, the bank foreclosed the mortgage on a home that Applicant owned with her ex-husband. The bank resold the home, and a \$58,000 deficiency remains outstanding. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The conditions that resulted in Applicant’s financial problems were largely beyond her control. She had no financial problems until she moved out of the home that she owned with her estranged husband in 2009, and two years later, he told her he was no

longer going to share the responsibility to pay the mortgage. At that time, the collapse of the real estate market rendered the house worth substantially less than the amount they owed on the mortgage. Unable to recoup the mortgage cost, they attempted to short sell the home, an option that, though not ideal, is neither illegal nor in bad faith. The mortgage was not foreclosed until the mortgagee rejected the contracts of two successive, potential buyers. Under these circumstances, I conclude that AG ¶¶ 20(a), 20(b), and 20(d) apply.

Applicant successfully completed a money management class. She maintains a budget, has nearly \$700 of monthly discretionary income, and has approximately \$15,000 invested in a retirement account. I conclude AG ¶ 20(c) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Applicant's inability to pay her mortgage did not occur because of irresponsible or extravagant spending on luxury items. Moreover, the mortgage foreclosure did not stem from a risky, speculative real estate investment. Instead, the mortgage foreclosure occurred after Applicant and her ex-husband unsuccessfully attempted to short sell their home after separating.

The foreclosure was an isolated episode of financial difficulty that occurred under unusual circumstances. In an effort to improve her financial well-being after the foreclosure, Applicant completed a comprehensive money management course. When evaluating these factors together with the compelling evidence of Applicant's strong work performance, I conclude that she has mitigated the security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge